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Haiqi CHEN

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

Haiqi CHEN

Plaintiff,

v.

United States Citizenship and Immigration Services  
("USCIS"); Department of Homeland Security  
("DHS"); Department of Justice ("DOJ"); Federal  
Bureau of Investigation ("FBI")

Defendants.

Case No. C 07-2462 SC

**Declaration of Beth Feinberg  
in Support of Plaintiff's  
Opposition to Defendant's  
Motion to Dismiss**

Date: November 16, 2007  
Time: 10:00 a.m.

**DECLARATION OF BETH FEINBERG**

I, Beth Feinberg, hereby declare the following:

1. I am an Associate Attorney at Van Der Hout, Brigagliano and Nightingale, LLP, 180 Sutter Street, Fifth Floor, San Francisco, CA 94104. I have personal knowledge of the enclosed documents because Van Der Hout, Brigagliano & Nightingale, LLP represents Plaintiff Haiqi Chen ("Plaintiff") in his immigration matters. I make this declaration in support of Plaintiff's Opposition to Defendants' Motion to Dismiss.

2. On July 30, 2007, USCIS issued a Request for Evidence to Plaintiff, requesting that he submit an updated employer verification letter and evidence of his employment authorization from September 30, 2003 to the present. A copy of that Request for Evidence is attached as Exhibit A.

3. On August 15, 2007, Plaintiff responded to the Request for Evidence by submitting all requested documentation to USCIS. A copy of the cover letter of Plaintiff's responding to the Request for Evidence, evidencing the documents submitted, is attached as Exhibit B.

4. The USCIS website shows that as of October 15, 2007, the agency is currently processing employment-based adjustment of status applications received on or before December 19, 2006. A computer printout showing the USCIS Processing Dates is attached as Exhibit C.

I declare under penalty of perjury that the above information is true and correct to the best of my knowledge. Executed this 26th day of October, 2007 at San Francisco, California.

/s/  
Beth Feinberg

U.S. Department of Homeland Security  
P.O. Box 82521  
Lincoln, NE 68501-2521



U.S. Citizenship  
and Immigration  
Services

July 30, 2007

Refer to File Number: WAC0320553173



HAIQI CHEN  
C/O JOCELYNE J KIM LEW  
JOCELYNE J KIM LEW  
RE: HAIQI CHEN  
2055 WOODSIDE RD STE 150  
REDWOOD CITY CA 94061-3347

Dear Sir or Madam:

RE: Form: I485

Beneficiary: CHEN, HAIQI

**REQUEST FOR EVIDENCE**

The documentation submitted is not sufficient to warrant favorable consideration of your petition/application.

**See Attachment for Details**

**Your response must be received in this office by September 10, 2007.**

Your case is being held in this office pending your response. Within this period you may:

1. Submit all of the evidence requested;
2. Submit some or none of the evidence requested and ask for a decision based upon the record; or
3. Withdraw the application or petition. (It is noted that if you request that the application or petition be withdrawn, the filing fee cannot be refunded).

You must submit all of the evidence at one time. Submission of only part of the evidence requested will be considered a request for a decision based upon the record. No extension of the period allowed to submit evidence will be granted. If the evidence submitted does not establish that your case was approvable at the time it was filed, it can be denied.

If you do not respond to this request within the time allowed, your case will be considered abandoned and denied. Evidence received in this office after the due date may not be considered.

**PLACE THIS LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL. PLEASE USE THE ENCLOSED ENVELOPE TO MAIL ADDITIONAL EVIDENCE REQUEST BACK TO THIS OFFICE.**

Sincerely,

F. Gerard Heinauer

Director

NSC/SNG EX104

Nebraska Service Center

www.uscis.gov

EXHIBIT *A*

Receipt Number: WAC0320553173

### Attachment

You must submit a currently dated letter from your intended permanent employer, describing your present job duties and position in the organization, your proffered position (if different from your current one), the date you began employment and the offered salary or wage. This letter should be in the original and signed by an executive or officer of the organization who is authorized to make or confirm an offer of permanent employment. The letter must also indicate whether the terms and conditions of your employment-based visa petition (or labor certification) continue to exist.

Please submit proof of your continuous employment authorization in the U.S. from 9/30/2003 to the present. Such evidence may include copies of:

- Employment Authorization Documents (Forms I-688 or I-766) granted to you by this Service
- Form I-797 approval notices, showing you were granted status in an employment-authorized nonimmigrant classification
- Copies of Form I-94 Arrival/Departure Records showing you were admitted to the U.S. in an employment-authorized nonimmigrant status



Law Offices of

JOCELYNE J. KIM LEW A Professional Law Corporation

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2055 Woodside Road • Suite 150 • Redwood City, CA 94061-3347

650 369-2055 • fax 650 369-3285

August 15, 2007

U.S. CITIZENSHIP AND IMMIGRATION SERVICES  
Nebraska Service Center  
850 "S" Street  
Lincoln, NE 68501

RE: REQUEST FOR EVIDENCE  
APPLICATION TO ADJUST STATUS TO PERMANENT RESIDENT

APPLICANT: CHEN, HAIQI  
FILE NO.: A097 346 394  
RECEIPT NO.: WAC 03 205 53173

Gentleman/Madam:

Pursuant to your Request For Evidence dated July 30, 2007, please find enclosed the following:

1. A currently dated confirmation of employment letter from @Road, Inc., who originally sponsored the applicant;
2. A certified copy of the applicant's most recent H-1B Approval Notice valid from October 1, 2003 to September 30, 2006;
3. A copy of the applicant's two EAD cards with validity dates of June 1, 2006 to May 31, 2007 and June 1, 2007 to May 31, 2008; and
4. A copy of the applicant's most recent Form I-94 showing that the applicant last entered the U.S. on parole.

Dr. Chen submitted his Application to Adjust Status to Permanent Resident (I-485) based on an I-140 filed by @Road, Inc. Dr. Chen continues to be employed by @Road, Inc. in the same position as the one certified on the Labor Certification Application. Additionally, since the filing of his I-485, Dr. Chen has had authorization to work in the U.S.

~~Should you require any further information or documentation in this matter, please do not~~  
hesitate to contact this office.

Thank you for your kind attention to this matter.

Very truly yours,

JOCELYNE J. KIM LEW  
Attorney at Law

JJKL:nfp

Enclosures

cc: Debi Hirshlag  
✓ Haiqi Chen

EXHIBIT B



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## U.S. Citizenship and Immigration Services Nebraska Service Center Processing Dates Posted October 15, 2007

**Notice:** U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report the USCIS service level commitment. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show "6 months".

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

### There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information.  
If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

### What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

### Case Services - How do I... know what kind of services are available to me after I file my application or petition?

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer for your records.

EXHIBIT C

Service Center Processing Dates for **Nebraska Service Center** Posted October 15, 2007

Form	Title	Classification or Basis for Filing	Processing Timeframe



<b>I-90</b>	Application to Replace Permanent Resident Card	Initial issuance or replacement	November 06, 2006
<b>I-90</b>	Application to Replace Permanent Resident Card	10-year renewal	December 27, 2005
<b>I-90A</b>	Application to Replace Permanent Resident Card	Initial issuance or replacement for Special Agricultural Workers (SAW)	6 Months
<b>I-102</b>	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94	3 Months
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S.	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S.	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-2A - Temporary workers	15 Days
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	30 Days
<b>I-129</b>	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	L - Intracompany transfers	30 Days
<b>I-129</b>	Petition for A Nonimmigrant Worker	Blanket L	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	O - Extraordinary ability	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	R - Religious occupation	May 14, 2006
<b>I-129</b>	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	May 14, 2006
<b>I-131</b>	Application for Travel Document	Permanent resident applying for a re-entry permit	May 07, 2007
<b>I-131</b>	Application for Travel Document	Refugee or asylee applying for a refugee travel document	May 07, 2007
<b>I-131</b>	Application for Travel Document	Haitian Refugee Immigrant Fairness Act (HRIFA) principal applying for advance parole	July 02, 2007
<b>I-131</b>	Application for Travel Document	Haitian Refugee Immigrant Fairness Act (HRIFA) dependent applying for advance parole	January 14, 2007
<b>I-131</b>	Application for Travel Document	All other applicants for advance parole	July 02, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Extraordinary ability	January 26, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Outstanding professor or researcher	January 10, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Multinational executive or manager	December 04, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Schedule A Nurses	October 30, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability	February 06, 2007
<b>I-140</b>	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability requesting a National Interest Waiver	August 01, 2006
<b>I-140</b>	Immigrant Petition for Alien Worker	Skilled worker or professional	November 14, 2006

I-140	Immigrant Petition for Alien Worker	Unskilled worker	October 20, 2006
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	6 Months
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	6 Months
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	December 19, 2006
I-485	Application to Register Permanent Residence or to Adjust Status	Based on grant of asylum more than 1 year ago	November 13, 2006
I-485	Application to Register Permanent Residence or to Adjust Status	Based on refugee admission more than 1 year ago	November 09, 2006
I-485	Application to Register Permanent Residence or to Adjust Status	Under the Haitian Refugee Immigrant Fairness Act (HRIFA)	April 15, 2007
I-485	Application to Register Permanent Residence or to Adjust Status	Under the Indochinese Adjustment Act	6 Months
I-539	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	May 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	May 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	May 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other change of status applications	May 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	May 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	May 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	May 09, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other extension applications	May 09, 2007
I-612	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	February 28, 2007
I-730	Refugee/Asylee Relative Petition	Petition for accompanying family members of a refugee or an asylee	September 01, 2006
I-751	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	January 03, 2007
I-765	Application for Employment Authorization	Based on an approved asylum application [(a)(5)]	30 Days
I-765	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	11 Weeks
I-765	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	30 Days
I-765	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	July 02, 2007
I-765	Application for Employment Authorization	All other applications for employment authorization	July 27, 2007
I-817	Application for Family Unity Benefits	Voluntary departure under the family unity program	6 Months



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